ПРАВО

УДК 341.341:344.22
DOI:https://doi.org/10.17721/1728-2217.2022.52.43-49

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PRISONERS OF WAR LEGAL REGIME IN RUSSIA-UKRAINE CONFLICT

The article examines the content of the legal regime defined by the Third Geneva Convention of 1949 and the First Additional Protocol of 1977 regarding the treatment of prisoners of war. The content of the obligations of the subjects of international relations for the implementation of the norms and principles of IHL was studied. The results of the implementation activities of Ukraine and the Russian Federation before the start of full-scale aggression and after it were analyzed. Attention is paid to the importance of researching the content of the updated 2020 Commentary to the Third Geneva Convention and its implementation into national legislation. The content of the main principles of International Humanitarian Law regarding the treatment of prisoners of war is described in detail. It is noted that the level of effectiveness of compliance with the norms and principles of IHL during the conflict depends on the completeness of the implementation. As of February 2022, both states were not ready to fulfill their obligations to comply with GCIII. Ukraine, as a party to the conflict, quickly began implementation activities and adopted a number of acts on the treatment of prisoners of war, including a national information bureau. On the other hand, the Russian Federation did not and still does not intend to initiate similar implementation measures. The problem of the procedure of activating the legal regimes "state of war" and "martial law" by political leadership of Ukraine, as well as the formal recognition of the existence of an international armed conflict, is considered. The National Information Bureau in Ukraine was created and started its activities. In Russia internal legal and political discourse still does not recognize the existence of an armed conflict which hinders the implementation process.

Keywords: Prisoners of War, International Armed Conflict, International Humanitarian Law, Third Geneva Convention, ratification, implementation.

Formulation of the problem. Since February 2022, numerous cases of illegal detainment and extreme mistreatment, including PoWs, have been reported in the Ukrainian territory, occupied by Russian forces during the full-scale invasion. Unprecedented and unimaginable cases of torture and abuse committed by the Russian military against Ukrainian prisoners bring to the fore the issue of the application of the relevant norms of IHL by the parties to the largest conflict in Europe since the Second World War. It is no longer just a subject of research by representatives of academic circles, but is becoming a regular daily work of a large number of government bodies and a subject of supervision by human rights organizations.

Analysis of recent research and publications. With the beginning of the Russian aggression attention of academic circles to the issue of compliance with the norms and principles of IHL, in particular with regard to persons captured by the warring parties, has increased. In 2020, the updated ICRC Commentary on the Third Geneva Convention was published, the brilliant analysis of which was carried out by C. Droege. M. Hrushko studied the formation and specifics of the international legal regime of prisoners of war, D. Koval and R. Avramenko identified the peculiarities of the investigation of international crimes committed, in particular, against prisoners, well-known European scientists M Sassoli and A. Bouvier the fundamental work "How does Law protect in War" was devoted to the theoretical and practical aspects of legal protection during an armed conflict, outstanding Ukrainian scientist O. Zadorozhnyi investigated the violation of international law by Russia in the context of the armed conflict, R. Geiss revealed the content of the fundamental right of combatants to keep silence after being captured, I. Kravchenko delineated the legal status of PoWs and civilian hostages.

Aim of the article is to investigate the 1949 Third Geneva Convention implementation mechanism in Ukraine and Russian Federation and to analyze effectiveness of national norms issued for the purpose of its implementation.

Main material presenting. *Obligation of parties to international armed conflict to act in accordance to Third Geneva Convention.* International humanitarian law as a branch of law has its own peculiarities, which in particular consist in the fact that obligations under IHL are mostly mentioned only with the beginning of an armed conflict. And this is obvious, since the main goal of IHL is the protection of persons and objects even after the beginning of the conflict. Moreover, depending on the type of conflict, the content and scope of the relevant norms of IHL are not the same, and the reluctance (inability) of the parties to the conflict to recognize the existence of the very fact of the conflict creates significant problems of law enforcement.

One of the obligations of the parties to an international armed conflict is the protection of those persons who acquire the status of prisoners of war after falling into the power of the enemy. Within the framework of IHL, the specified obligations are among the most clear and detailed. Their basis is a humane attitude and respect for dignity, regardless of race, religion, nationality, gender, etc.

After the end of the WW2, most of the conflicts had a non-international (internal) nature, and the most serious violations of human rights occurred during precisely such conflicts. International justice was also focused on prosecuting individuals who committed crimes during internal conflicts. This has caused enforcement difficulties, as the scope of applicable IHL during NIAC is not the same as in the case of IAC (for example, it concerns the legal status of combatants and, accordingly, prisoners of war).

Currently, it is obvious that the armed conflict between Russia and Ukraine is international. In the field of law enforcement, this means the full application of the Third Geneva Convention of 1949 and the First Additional Protocol of 1977, as well as the customary rules of IHL. Both sides of the conflict have ratified the said treaties, however, as always happens in the real world, the problem lies in the scope of implementation of the ratified norms and the desire to comply with the obligations assumed.

ISSN 1728-2217

The Third Geneva Convention of 1949 (GCIII) can be recognized without exaggeration as the most voluminous, comprehensive, clear and unambiguous to understand among other acts of Geneva Law. Adherence to these rules, provided that they are properly implemented and executed in good faith, ensures reliable protection of prisoners.

GCIII protects prisoners of war from ill-treatment by prohibiting any illegal act or omission that results in the death of a prisoner of war or seriously endangers his health, and gives prisoners of war the right to respect for their person and honor (Articles 13, 14).

The Convention also prohibits and obligate:

Apply physical or mental torture to prisoners of war (Article 17);

Any collective punishment for individual misconduct, any corporal punishment, confinement in rooms deprived of daylight, and in general any kind of torture or ill-treatment (Article 87);

Disciplinary sanctions must in no case be inhuman, cruel or dangerous to the health of prisoners (Article 89).

In addition, the Convention imposes a number of obligations on states participating in an armed conflict, the main of which are the following:

Establish Information Bureaus (Article 122);

Provide prisoners of war with the opportunity to inform both their families about their capture and place of detention (no later than within a week from the moment the prisoner of war arrives at the camp) and the National Information Bureau for Prisoners of War of another state participating in the conflict (Article 70);

To provide the prisoner of war with the possibility of further communication with the family (Articles 71-72);

Ensure, as soon as possible, the evacuation and subsequent detention of prisoners of war in places located far enough from the combat zone for the prisoners to be safe (Article 19);

Provide prisoners of war with drinking water and food in sufficient quantities, provide them with the necessary clothing and medical care (Articles 20, 26, 27, 29-31);

Do not place prisoners of war in prison buildings (Article 22) and under no circumstances transfer them to serve disciplinary sanctions in correctional facilities (Article 97).

Over the past seventy years, GCIII has ensured that prisoners of war are treated humanely and with respect for their dignity while in the hands of enemy forces, saving countless lives, and is a practical and invaluable resource for ensuring the humane treatment of prisoners of war. The experience of these years shows that the observance of the rights of prisoners comes from specific interpretations of the provisions of the Convention.

Protection provided by GCIII by the parties to the conflict has a direct impact on the physical and mental health of detainees, their resilience and their ability to recover from captivity.

In 2020, the ICRC published an updated commentary on GCIII. The commentary was created based on the results of the analysis of the practice of applying IHL over the past decades. The commentary contains a new interpretation of GCIII and, very importantly, considers the legal and technological developments that have taken place since the publication of the first commentary sixty years ago [1, 2].

The ICRC highlights the most important means of protection that IHL provides to prisoners of war, in particular:

Humane treatment. A fundamental principle that prisoners of war must always be treated humanely and protected. They are protected from acts of violence and intimidation, insults and public curiosity, as well as from repression unjustified for medical or scientific experiments.

Respect for their persons and honor. The duty to respect the personality of prisoners of war and their honor under all circumstances. The ICRC separately insists on ensuring due respect for the sense of worth that each person has for himself. Prisoners have the right to wear their ranks, national insignia and military decorations, to be treated according to their rank and age, etc.

Equality and non-adverse distinction. All prisoners have the right to equal respect and protection; they should be treated equally. This means not only the prohibition of discrimination against certain categories, but also the obligation to consider and respond to special needs, especially when it comes to certain categories (women, the sick, persons with disabilities, etc.).

Questioning. Prisoners of war are obliged to state only their name, rank, date of birth and military number. This is to enable the detaining party to the conflict to establish the identity, status and rank of the captives. Such information enables the detaining power to identify prisoners of war and prevent their disappearance, as well as provide them with appropriate treatment. It is forbidden to subject prisoners of war to any physical or mental torture, as well as other forms of coercion for the purpose of obtaining any other information.

Medical attention. Provision of both physical and mental health, access to medical care, provision of clean and healthy living conditions in the camps. Seriously wounded or sick prisoners of war should be directly repatriated to their country or transferred to a neutral country for treatment.

Contact with the outside world. Prisoners have the right to maintain contact with their families, send and receive letters, cards, parcels. The commentary separately emphasizes ensuring the use of modern means of communication. The importance of the activity of the Central Agency, as well as the creation of national information bureaus.

Right to be visited by the ICRC. The party to the conflict is obliged to allow representatives of the ICRC to visit all places where prisoners of war are held and to interview them without witnesses, and may not impose any restrictions on visiting the places of their detention.

Right to a fair trial. Prisoners cannot be prosecuted only for the fact of participation in hostilities. If they are accused of an offence, they should be tried by an independent and impartial court in a fair trial with the necessary judicial guarantees.

Release and repatriation. The obligation to release and repatriate after the cessation of active hostilities (except when they have been charged with a criminal offense or are serving a criminal sentence), even in the absence of a peace treaty.

The huge number of violations of these principles, recorded after February 24, 2022, actualizes the task of investigating the issue, in particular, of the formal readiness of the parties to the conflict to ensure compliance with obligations under IHL.

Implementation. Ratification of conventions is only the beginning of a long way of fulfilling international obligations. Most often, it is the implementation procedures in peacetime that become the main problem of the national transition from declaration to enforcement. At this stage, the authorities are constantly faced with the negative attitude of society to the appearance in national legislation of norms regulating the rules of hostilities, that is, in fact, the laws of war (Are we already at war? If not, then why should we, a peaceful state, NOW introduce norms, for example, how to deal with prisoners of war?). What is a completely logical step for

academic circles, society (whose sentiments are considered by politicians) meets with quite natural apprehension.

Russia-Ukraine armed conflict began in 2014, when Russia attempted annexation of Crimea and invaded the eastern part of Ukraine (which has the unofficial name "Donbas"). However, it was after the full-scale invasion of Russian troops on February 24, 2022 that Ukraine faced new legal challenges, in particular in the field of IHL: the aggressor no longer denies hostilities on the territory of Ukraine, and the number of prisoners of war on both sides of the conflict is estimated in the thousands.

Until 2022, Ukraine did not treated captured persons in accordance with the norms of GCIII. After the full-scale Russian invasion Ukraine began a radical transformation of the system of normative acts in order to fully implement the provisions of GCIII into national legislation.

Until February 2022, cases of capture of prisoners of war (by both sides of the conflict) were not frequent, and Ukraine's modus operandi was mostly to carry out non-public exchanges with the Russian side. Currently, Ukraine, as a party to an international armed conflict, is trying to treat prisoners in accordance with the requirements of GCIII.

There is a peculiarities of official (constitutional) recognition of Ukraine as a party to an international armed conflict and establishment (implementation) of the appropriate legal regime.

The Geneva Conventions of 1949 mention the fact of declaring a "state of war" as a basis for their application (the question of declaring war under jus ad bellum or distinguishing between the concepts of "armed conflict" and "war" is the subject of further discussions).

According to Article 106 of the Constitution of Ukraine, the President submits a motion to the Parliament to declare a state of war and in the event of armed aggression against Ukraine. Also, this article stipulates that the President decides to introduce martial law if there is a threat of attack [3].

Thus, the Constitution empowers the President to initiate the introduction of two different legal regimes: "state of war" and "martial law". Moreover, if the grounds for the activation of "martial law" are defined, the Constitution does not contain conditions for the initiation of a "state of war". Moreover, the declaration of a "state of war" may not coincide in time with the beginning of aggression against Ukraine.

Within the Law "On the Defense of Ukraine" Article 4 "Resisting armed aggression against Ukraine" provides that in the case of 1) armed aggression against Ukraine or 2) a threat of an attack on Ukraine, the President 1) decides on the introduction of martial law, the use of the Armed Forces, 2) submits this decision to the Parliament on approval, as well as 3) submits a motion to the Parliament to declare a state of war. Thus, the Law provides for the presence of the fact of 1) armed aggression or 2) the threat of an attack on Ukraine as a basis for introducing the legal regimes of "martial law" and "state of war" [4].

The Law also does not contain an answer about activation of IHL when "martial law" is activated, as well as the content of the "state of war" legal regime.

Therefore, the legislation of Ukraine has two different legal regimes: "martial law" and "state of war", which, however, do not provide unambiguous answers to the question of the activation of relevant norms of IHL.

The full-scale invasion radically changed Ukraine's *modus operandi* in activities regarding:

considering the immunity of the combatant when qualifying the actions of prisoners of war;

determination of their procedural role in the investigation of war crimes;

providing guarantees of their maintenance in accordance with IHL;

establishing a political procedure for the exchange of prisoners of war.

Domestic legal regulation of PoWs treatment. Until February 2022, the IHL implementing act in Ukraine was the MoD IHL Manual of 2017 [5]. This Manual duplicated the general norms on the status of prisoners of war and did not establish detailed procedures for their treatment, accommodation, information, access, etc.

With the beginning of full-scale aggression, urgent efforts were made to implement IHL into national legislation.

On March 11 (two weeks after the beginning of the invasion), the Government established the Coordinating Headquarters for the Treatment of Prisoners of War, with the aim of coordinating the activities of state bodies [6].

Also, in March 2022, the Ministry of Defense and the Ministry of Justice issued an order "On temporary measures for the placement and detention of prisoners of war", which regulated the procedure for registering, placing and accounting for prisoners of war [7]. The number of captured Russians, which was constantly increasing, forced the urgent introduction of such temporary measures.

A week later, the Law "On the Defense of Ukraine" was amended and the Government of Ukraine acquired the authority to deploy places of detention of prisoners and establish the procedure for their treatment. The Government should also chose a state institution that will perform the functions of the National Information Bureau in accordance with Article 122 GCIII (collecting and analyzing information about prisoners of war, keeping centralized records, collecting and transferring their personal valuables, exchanging information about prisoners of war with state authorities, ICRC) [8].

On April 5, the Cabinet of Ministers of Ukraine approved the "Procedure for keeping prisoners of war", defining in detail the conditions of their treatment, the order and places of their placement, etc. By this act, the Government instructed the Ministry of Justice to identify and repurpose penal institutions as prisoner of war camps, to create precincts for prisoners of war in local penal institutions and pretrial detention centers, to organize placement, detention, security, and medical care of prisoners of war in camps and precincts [9].

The procedure contains the following main aspects:

general principles of prisoners of war treatment;

creation and operation of PoW camps;

procedure for admitting prisoners of war to PoW camps;

participation of prisoners of war in investigative (search) and other procedural actions, court proceedings;

food, material and medical support for prisoners of war;

involvement of prisoners of war in the performance of work;

religious, intellectual and physical activity of prisoners of war;

disciplinary sanctions;

money of prisoners of war;

procedure for receiving letters, postcards and parcels, granting the right to telephone conversations;

organization of burial, repatriation, hospitalization in neutral countries and release of prisoners of war.

Initial (after capture) detention of prisoners is provided for in specially equipped places in remand detention centers, and for permanent detention in a specially converted penitentiary.

This act is a comprehensive document that implements IHL norms on a specific issue (GCIII) into national legislation.

Situation in Russia is vividly characterized as follows.

An act similar to IHL Manual was issued in Russia: "Manual on International Humanitarian Law for the Armed Forces of the Russian Federation" was adopted by the Russian Ministry of Defense in 2001. "Provisions of this Manual must be used in accordance with the situation, resolutely striving for the unconditional fulfillment of combat missions while observing the norms of international humanitarian law. Rules of international humanitarian law are summarized in this Manual. If you need to familiarize yourself with the content of the norms in full, you should use the text of the above agreements" [10].

So, it is clear that the further implementation of the norms and principles of IHL (at least in the armed forces) is not a Russian priority.

Russia's human rights activists published an appeal to the leadership of Russia "Creation of the National Information Bureau for Prisoners of War and other steps to fulfill Russia's international obligations" [11, 12].

According to their statement there is no official information on the fulfillment of the vast majority of Russia's obligations under the GCIII.

This is confirmed by regular appeals to human rights organizations. People do not know where and how to get information about their relatives who are participating in hostilities, who and how to contact.

It critical that the government of the Russian Federation, in order to fulfill its international legal obligations in the field of the treatment of prisoners of war, urgently take the following steps:

Establish a National Information Bureau. Inform the public about how it works, including how Russian citizens can contact it to obtain information about their relatives who are allegedly captured;

Report to the Russian public about what information about Russian prisoners was transferred by Ukraine to Russia and what measures were taken by the Russian authorities to inform the relatives of captured Russian citizens about the fact of captivity and about the place where the prisoner is being held; provide such information regularly and publicly;

Report to the Russian public on what information and on how many Ukrainian prisoners Russia has and on what measures were taken by the Russian authorities both to transfer to Ukraine lists of Ukrainian prisoners of war with an indication of their places of detention, and to provide the prisoners themselves with the opportunity to inform his relatives about his captivity and place of detention?

Inform the Russian public about which government agency (or structure within a government agency) is responsible for issues related to the detention of Ukrainian prisoners of war, and what regulatory documents regulate the maintenance, treatment of prisoners of war, organization of their nutrition and medical care, and the procedure for providing information on the condition prisoners of war, guided by this structure in their actions?

Inform the Russian public about who can inspect the places of detention of Ukrainian prisoners and how the control of the conditions of their detention, the organization of their food and medical care is organized?

Report to the Russian society on the conditions of detention of Ukrainian prisoners, on the implementation of measures to ensure the prohibition of torture and other forms of cruel and degrading treatment and punishment, and on how the obligations of the Russian Federation are observed in accordance with the Third Geneva Convention in the course of treatment of prisoners.

This proves that the Russian side of the conflict has no intention of resorting to the implementation of the relevant norms of IHL. Such a position corresponds to Russia's attempt to create legal chaos, and to replace the proper legal order with total propaganda.

National classification of conflict. The correct and timely qualification of the type of armed conflict at the national level affects the application of already valid domestic legal norms (and the implementation of IHL) and ensuring the rights of persons detained in the context of an armed conflict. The quality and completeness of the implementation, as well as the timely and correct application of IHL norms and principles by the party to the conflict, are evidence of the state's proper fulfillment of its international positive and negative obligations. In the context of ensuring the rights of persons who have fallen under the power of the enemy, the qualification of the type of conflict will affect the application of GCIII (such persons having the status of a combatant and, accordingly, acquiring the status of a prisoner of war), as well as the qualification of offenses against them.

With the beginning of an armed conflict, the determination of the norms and principles of IHL that should be applied to the situation becomes of practical importance. In 2014, due to the hybrid nature of the confrontation in the eastern part of Ukraine, establishing the type of conflict (international or non-international) was not an easy task.

At the same time, the use of theoretical models of qualifications is clearly not enough for law enforcement practice: political will and formalization of qualifications by higher authorities in a constitutional manner is necessary.

One of the fundamental rules of application of the 1949 Geneva Conventions (and GCIII in particular) is that they apply to all cases of declared war or any other armed conflict, even if one of the parties does not recognize the state of war. The Convention also applies to all cases of partial or total occupation, even if this occupation is not met with any armed resistance. In the aspect of *state law enforcement*, this means that for state authorities to activate those provisions of GCIII that come into effect with the onset of an international armed conflict, there is recognition of its beginning by at least one of the parties to the conflict (or the fact of occupation).

Since 2014, the Russian Federation has repeatedly emphasized that it does not recognize the existence of an armed conflict with Ukraine, and even in 2022 the meaningless term "special military operation" was used. Nevertheless, the aggressor tried to formalize the conflict through the prism of the UN Charter: Russia launched a special operation to protect the population of Donbas in accordance with Article 51 of the UN Charter. Since Article 51 of the UN Charter defines the inalienable right to individual or collective self-defense in the event of an armed attack, Russia's position can be considered as participating in an international armed conflict with corresponding obligations under IHL.

After the seizure of Crimea and the start of hostilities in the eastern part of Ukraine, the National Security and Defense Council of Ukraine launched an anti-terrorist operation on April 13, 2014 [13]. The security and defense sector of Ukraine has acquired the authority to act within the framework of a security (anti-terrorist) operation, as provided by the Law of Ukraine "On Combating Terrorism". The legal regime of anti-terrorist activities provides for the presence of hostages, not prisoners of war. The national legislation does not contain normatively established principles for the protection of hostages (by analogy with prisoners of war). Since no legal regimes related to the

recognition of the existence of a conflict ("martial law" and "state of war") have been initiated in the state, the application of GCIII has also not started.

On the other hand, Ukraine (mainly in the political sphere) continued to emphasize the actual presence of aggression by the Russian Federation against Ukraine. For example, on January 27, 2015, the Verkhovna Rada of Ukraine (the Parliament) declared that "...recognizes the Russian Federation as an aggressor state and calls on Ukraine's international partners not to allow impunity for those guilty of crimes against humanity committed since the beginning of Russian aggression against Ukraine..." [14]. Also, Article 2 of the Law "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" stated that the date of the beginning of the occupation of the Autonomous Republic of Crimea and the city of Sevastopol is February 20, 2014 [15]. The legal regime of the anti-terrorist operation was maintained until 2018.

Almost four years later (in January 2018) after the start of the conflict, the Law "On Peculiarities of State Policy to Ensure State Sovereignty of Ukraine over the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" was adopted [16]. The law formalized relations between Russia and Ukraine: Russia's actions are qualified as aggression against Ukraine and "temporary occupation of certain territories of Ukraine"; the legal regime of the anti-terrorist operation was changed to "measures to ensure national security and defense, repel and contain the armed aggression of the Russian Federation in the Donetsk and Luhansk regions". Recognizing, albeit indirectly, the fact of an international armed conflict, this law does not include the issue of granting captured persons the status of prisoners of war.

Therefore, with the beginning of the conflict, the activity of state bodies was based on a security, not a defensive (military) legal regime. The state did not formalize the existence of an international armed conflict in a constitutional manner. Accordingly, the state bodies had no legal grounds for initiating the application of relevant norms and principles of GCIII.

So until February 2022, the Ukrainian did not formal started a legal regime corresponding to an international armed conflict.

In February 2015 the Parliament of Ukraine recognized the jurisdiction of the International Criminal Court (despite internal political reasons for reluctance to ratify the Rome Statute until now) [17]. Therefore, the ICC has the authority to carry out a preliminary investigation of the situation in Ukraine and to assess the nature of the armed conflict.

The classification of the conflict as a combination of two types of conflicts (before the start of the invasion in 2022) is also confirmed in the proceedings of the International Criminal Court. The Prosecutor's Office of the International Criminal Court noted the existence of an international armed conflict in the context of armed actions in the east of Ukraine since July 14, 2014 at the latest, in parallel with a non-international armed conflict, while simultaneously investigating the issue of proving Russian control over the so-called DPR/LPR [18].

The prospects of applying the concepts of effective and general control in proving Russia's armed aggression against Ukraine and in the period 2014–2022 and the absence of subjectivity in the DPR/LPR as a party to the conflict (cases of Ukraine v. Russia in the ECtHR, ICC) are worthy of attention.

National information bureau. On March 17, 2022, the Government of Ukraine entrusted the Ukrainian National Center for Peacebuilding with the functions of a national information bureau in accordance with GCIII [19].

The Ukrainian National Peacebuilding Center was established in December 2021 by the Ministry of Reintegration of the Temporarily Occupied Territories. The purpose of the center is to coordinate activities in the field of peace building, overcoming the consequences of armed conflict, monitoring and documenting violations of human rights, norms of international law and damage caused by the aggression of the Russian Federation. The main function of the Center is to create a state system for monitoring and documenting violations of human rights, IHL and other violations committed during the aggression of the Russian Federation and its occupation of parts of Ukraine [20].

As Vice Prime Minister Iryna Vereshchuk noted, "The philosophy of this Center is two words that are fundamental in building peace – restoration of justice and trust of people from the occupied territories." The Government noted that 2022 will be the period of the Center's formation and its content [21].

Thus, for now, Ukraine has fulfilled its obligations to create an information bureau, which will act in accordance with Article 122 of the GCIII and Article 136 of the GCIV, which was even reported by the Russian media [22].

The key purpose of this body is to collect and summarize data on prisoners of war, dead, missing, illegally detained by the occupiers, including civilians from both sides of hostilities. At the same time, the mentioned Center was created in 2021 to fulfill other goals and tasks (than the national information bureau); as of February 2022, the Center has not achieved 100 % operational activity (which was expected to be achieved during 2022). In addition, the Ministry of Reintegration of Temporarily Occupied Territories is not part of the Security and Defense Sector.

According to the Red Cross Society of Ukraine, a similar information bureau was created in the Russian Federation, which "enables the process of exchanging both prisoners and the bodies of the dead" [23], however, no official information was found.

Conclusions. Effectiveness of compliance with International Humanitarian Law during conflict depends, in particular, on the completeness of implementation. Political rating considerations (reluctance to "annoy" society, replacement of legal aspects with propaganda, etc.) mostly stand in the way of full implementation in peacetime or during a low-intensity conflict. State authorities starting effective implementation activities after the beginning of the conflict or in case of conflict phase transformation (from low intensity to active).

The problem of the application of IHL during the conflict is a consequence of the imperfect internal system of the state's recognition of itself as a belligerent.

Updated 2020 Commentary on the Third Geneva Convention becomes the highest standard in the process of implementing IHL norms and principles into national legislation.

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Надійшла до редколегії 09.11.22

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ПРАВОВИЙ РЕЖИМ ВІЙСЬКОВОПОЛОНЕНИХ У РОСІЙСЬКО-УКРАЇНСЬКОМУ КОНФЛІКТІ

Досліджено зміст правового режиму військового полону, визначеного Третьою Женевською конвенцією 1949 р. та Першим додатковим протоколом 1977 р. Досліджено зміст зобов'язань суб'єктів міжнародних відносин щодо реалізації норм і принципів міжнародного гуманітарного права (МГП) та зокрема Третьої Женевської конвенції. Проаналізовано результати імплементаційних заходів України та російської федерації до початку повномасштабної агресії 2022 р. та після неї. Вказано на важливість дослідження змісту оновленого коментаря Міжнародного Комітету Червоного Хреста 2020 р. до Третьої Женевської конвенції та актуальність його імплементації в національне законодавство. Детально описано зміст основних принципів МГП щодо поводження з військовополоненими. Зазначено, що від повноти їх виконання залежить рівень ефективності дотримання норм і принципів МГП під час конфлікту. Починаючи з лютого 2022 р. Україна як сторона міжнародного збройного конфлікту швидко розпочала імплементаційні заходи та ухвалила ряд актів щодо поводження з військовополоненими, зокрема щодо створення національного інформаційного бюро, розгортання місць їхнього утримання, встановлення норм утримання та процедур зв'язку з уповноваженими організаціями та сім'ями. З іншого боку, російська федерація не ініціювала і не вбачається, що наразі має намір ініціювати подібні імплементаційні заходи, на що звертали увагу російські правозахисні організації. Розглянуто проблематику процедури активації правових режимів "стан війни" та "воєнний стан", а також формального визнання наявності міжнародного збройного конфлікту. Внутрішній правовий та політичний дискурс росії і досі не визнає існування міжнародного збройного конфлікту, що перешкоджає імплементаційному процесу.

Ключові слова: військовополонені, міжнародний збройний конфлікт, міжнародне гуманітарне право, Третя Женевська конвенція, ратифікація, імплементація.